

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-6102

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

MICHAEL J. CONCESSI,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Raymond A. Jackson, District Judge. (CR-01-60; CA-03-320-2)

Submitted: December 10, 2004

Decided: January 5, 2005

Before NIEMEYER, LUTTIG, and MOTZ, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Michael J. Concessi, Appellant Pro Se. Alan Mark Salsbury, Assistant United States Attorney, Norfolk, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Michael J. Concessi seeks to appeal the district court's denial of his motion under 28 U.S.C. § 2255 (2000). Parties in a civil action in which the United States is a party have sixty days following a final order in which to file a notice of appeal. Fed. R. App. P. 4(a)(1)(B). A district court may extend the time to appeal upon motion filed within thirty days after expiration of the prescribed time, and a showing of excusable neglect or good cause. Fed. R. App. P. 4(a)(5).

The district court entered its order dismissing Concessi's § 2255 motion on October 30, 2003. Concessi's notice of appeal was filed on December 30, 2003, one day after the sixty-day period expired, but within the excusable neglect period. Because Concessi appeared to move for an extension of time pursuant to Rule 4(a)(5), we remanded the case to the district court to determine whether Concessi could demonstrate excusable neglect or good cause warranting an extension of the sixty-day appeal period. On remand, the district court found that Concessi had not established excusable neglect. We have reviewed the record and conclude the district court did not abuse its discretion in making this determination.

Because the district court declined to extend the appeal period based on excusable neglect, we dismiss the appeal for lack of jurisdiction. We dispense with oral argument because the facts

and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED